



## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 4

[PS Docket No. 21-346; PS Docket No. 15-80; ET Docket No. 04-35; FCC 22-50; FR ID 103460]

### Disruptions to Communications

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In a final rule published elsewhere in this issue of the Federal Register (final rule), the Federal Communications Commission (FCC or Commission) adopts a new “Mandatory Disaster Response Initiative” (MDRI). The final rule requires providers to file reports with the Commission following the MDRI’s activation, including testing of their roaming capabilities and reporting on the performance of their implementation of the MDRI to the Commission after the events. In the Further Notice of Proposed Rulemaking (FNPRM), the Commission seeks comment on whether reports submitted under the final rule would benefit from standardization, and what that should entail.

**DATES:** Comments are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and reply comments are due on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION].

**ADDRESSES:** You may submit comments, identified by PS Docket No. 21-346; PS Docket No. 15-80; and ET Docket No. 04-35, by any of the following methods:

- *Federal Communications Commission's website:* <https://www.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or

rulemaking number. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

- *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY).

**FOR FURTHER INFORMATION CONTACT:** Erika Olsen, Acting Division Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-2868, or via email at [Erika.Olsen@fcc.gov](mailto:Erika.Olsen@fcc.gov), or Logan Bennett, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-7790, or via email at [Logan.Bennett@fcc.gov](mailto:Logan.Bennett@fcc.gov).

For additional information concerning the information collection requirements contained in this document, contact Nicole Ongele, Office of Managing Director, Performance Evaluation and Records Management, 202-418-2991, or by email to [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further

Notice of Proposed Rulemaking (FNPRM), FCC 22-50, adopted June 27, 2022, and released July 6, 2022. The full text of this document is available by downloading the text from the Commission's website at: <https://docs.fcc.gov/public/attachments/FCC-22-50A1.pdf>. When the FCC Headquarters reopens to the public, the full text of this document will also be available for public inspection and copying during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

### **Initial Paperwork Reduction Act of 1995 Analysis**

The FNPRM seeks comment on potential new or revised proposed information collection requirements. If the Commission adopts any new or revised final information collection requirements when the final rules are adopted, the Commission will publish a document in the **Federal Register** inviting further comments from the public on the final information collection requirements, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13 (44 U.S.C. 3501-3520). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the PRA. Public and agency comments on the PRA proposed information collection requirements are due **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information

technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

### **Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), we have prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the proposed rule. We will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### **A. Need for, and Objectives of the Proposed Rules**

2. The FNPRM follows the Commission’s adoption of rules codifying the Mandatory Disaster Response Initiative (MDRI), including a mandatory reporting provision establishing a baseline of actions and assurances that facilities-based mobile wireless providers will engage in effective coordination and planning to maintain and restore network connectivity around disasters.
3. The FNPRM further explores the reporting provision from the final rule, and proposes the development of appropriate content and formatting of reports by which the Commission can assess whether the MDRI is being used by providers to enhance the reliability, resiliency, and continuity of associated disaster-time communications. In the FNPRM, the Commission seeks comment on: Whether to direct the Public Safety and Homeland Security Bureau, under delegated authority, to develop a standardized reporting form for the purposes of a provider’s compliance

with § 4.17(c) of our rules; The content of reports on MDRI compliance; The basis pursuant to which facilities-based commercial mobile radio service (CMRS) providers would be allowed to seek confidential treatment for reports under the Commission's confidentiality rule, or if other protections should apply, and; An appropriate effective date for any new reporting form(s) that may be developed, including whether the compliance date should depend on the class of provider (e.g., large versus small providers) subject to the requirements.

4. The FNPRM and matters upon which the Commission seeks comment are made against the backdrop of Hurricane Ida, which hit the United States as a Category 4 hurricane in August 2021 causing significant flooding and damage in several states along the southern and northeastern corridors of the United States. Hurricane Ida, as well as recent hurricane and wildfire seasons, earthquakes in Puerto Rico, and severe winter storms in Texas demonstrate that America's communications infrastructure remains susceptible to disruption during disasters. These disruptions can prevent the transmission of 911 calls, first responder communications, Emergency Alert System (EAS) and Wireless Emergency Alert (WEA) messages, and other potentially life-saving information. They also can have cascading detrimental effects on the economy and other critical infrastructures due to interdependencies among sectors, including the transportation, medical, and financial sectors, among others. Importantly, these disruptions may involve any or all communications networks – including wireline, wireless, cable, satellite, or broadcast facilities which requires the Commission takes affirmative and swift action to improve the reliability and resiliency of our Nation's communications networks during emergencies.
5. The reporting obligation adopted in the final rule at § 4.17(c) requires facilities-based wireless providers to submit a report detailing the timing, duration, and effectiveness of their implementation of the MDRI's provisions within 60 days of when the Bureau

issues a Public Notice announcing such reports must be filed for providers operating in a given geographic area in the aftermath of a disaster. Initial reports from providers pursuant to § 4.17(c) will be due in response to the first triggering event, as described at § 4.17(a), that occurs on or after a provider's associated compliance date.

6. In the FNPRM the Commission seeks comment on whether it would be beneficial to create a standardized form that providers could use for future reporting under rule § 4.17(c). To this end, the Commission proposes to direct the Public Safety and Homeland Security Bureau, under delegated authority, to develop a standardized reporting form. The Commission seeks comment on this approach and any associated costs and benefits.
7. The Commission also seeks comment on the contents of such standardized reporting forms. AT&T, for example, suggests that relevant details may include whether a provider roamed, the other providers it roamed with, the time period involved and, if relevant, the time it took for a provider to perform a health assessment and activate roaming. The Commission seeks comment on all the approaches described here, including on the associated costs and benefits.
8. The Commission seeks comment also on the basis pursuant to which facilities-based mobile wireless providers could seek confidential treatment for reports under the Commission's confidentiality rules, or if such reports should be publicly filed. The Commission seeks comment on an appropriate compliance date for providers' use of any new standardized reporting form(s) that may be developed, including whether the compliance date should depend on the class of provider (e.g., large versus small providers) subject to the requirements.

## **B. Legal Basis**

9. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 4(o), 201(b),

214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a-1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) through (j) & (o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a-1, and 615c.

### **C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the rules, adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

11. Small Businesses, Small Organizations, and Small Governmental Jurisdictions. The Commission’s actions may, over time, affect small entities that are not easily categorized at present. The Commission therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 32.5 million businesses.

12. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax

year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

13. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments – independent school districts with enrollment of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

14. The final rules apply only to facilities-based mobile wireless providers, which include small entities as well as larger entities. The Commission has not developed a small business size standard directed specifically toward these entities. However in our cost estimate discussion below, we estimate costs based on Commission data that there are approximately 63 small facilities-based mobile wireless providers. As described below, these entities fit into larger industry categories that provide these facilities or services for which the SBA has developed small business size standards.

15. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that



there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. The Commission notes that while facilities-based mobile wireless providers fall into this industry description, in assessing whether a business concern qualifies as "small" under the above SBA size standard, business (control) affiliations must be included. Another element of the definition of "small business" requires that an entity not be dominant in its field of operation. An additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria and its estimates of small businesses to which they apply may be over-inclusive to this extent. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific facilities-based mobile wireless provider impacted by the final rule is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply for this industry description is therefore possibly over-inclusive and thus may overstate the number of small entities that might be affected by our action.

17. Wireless Communications Services. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to part 27 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for

the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

18. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in part 27 of the Commission's rules for the specific WCS frequency bands.

19. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

20. The Commission expects the potential rules addressed in the FNPRM will impose new or additional reporting, recordkeeping, and/or other compliance obligations on facilities-based CMRS providers, who would potentially be required to keep records related to bilateral roaming agreements with other providers, submit reports to the Commission summarizing the utilization and effectiveness of roaming measures during times of disasters, and submit documents detailing the regular testing of their

roaming capabilities. In the FNPRM the Commission raises various matters relating to the reporting requirement obligations we should adopt, including whether to implement a standardized, streamlined reporting format, what information should be included in reports, should the information reported be treated as confidential, and when and how often should reports be filed with the Commission. The Commission also asks whether any provisions of the Framework should be included in reporting requirement obligations for facilities-based CMRS providers.

21. The FNPRM seeks comment on a number of aspects relating to our proposals and matters the Commission discusses, including the benefits and costs associated with a provider's implementation of them. The Commission seeks comment on and has requested cost and benefit information from commenters pertaining to our proposals, inquiries and conclusions in the FNPRM. The Commission expects the comments received in response the FNPRM to include information addressing costs, benefits, and other matters of concern which should help the Commission further identify and evaluate relevant issues for small entities, including compliance costs before adopting final rules.

#### **E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

22. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

23. The Commission has taken specific steps to address some of the costs for facilities-based mobile wireless providers subject to the potential rules discussed in the FNPRM. The Commission seeks to give facilities-based mobile wireless providers maximum flexibility and reduce potential costs of compliance, and believe the best approach is to solicit input from

facilities-based mobile wireless providers on the issues raised in the FNPRM. The Commission further believes that burdens on small and other providers would be diminished, and the value of the information collected increased, if providers were required to submit their reports in a standardized and streamlined format.

24. The Commission has proposed and seeks comment (including any associated costs and benefits), on requiring the Public Safety and Homeland Security Bureau, under delegated authority, to develop a standardized reporting form for the purposes of a provider's compliance with § 4.17(c) of our rules.

25. The Commission is mindful that small and other providers subject to any new rules adopted in this proceeding may incur compliance costs. To assist in the Commission's evaluation of the economic impact on small entities, the Commission seeks comment on the costs and benefits of various proposals and alternatives in the FNPRM. Having data on the costs and economic impact of proposals and approaches will allow the Commission to better evaluate options and alternatives for minimization should there be a significant economic impact on small entities as a result of our proposals. We expect to more fully consider the economic impact on small entities following our review of comments filed in response to the FNPRM, including costs and benefits analyses, and this IRFA. The Commission's evaluation of this information will shape the final alternatives it considers to minimize any significant economic impact that may occur on small entities, the final conclusions it reaches and any final rules it promulgates in this proceeding.

#### **F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

26. None

#### **SYNOPSIS**

### **II. FURTHER NOTICE OF PROPOSED RULEMAKING**

27. In the final rule published elsewhere in this issue of the Federal Register, the Commission takes steps to improve the reliability and resiliency of commercial wireless

networks by codifying key provisions of the 2016 Wireless Resiliency Cooperative Framework (Framework). The Commission mandates key provisions of the Framework for all facilities-based wireless providers, expands the conditions that trigger its activation, adopts testing and reporting requirements, and codifies these modifications in a new “Mandatory Disaster Response Initiative” (MDRI). In this respect, when activated the MDRI requires providers to: provide for reasonable roaming under disaster arrangements (RuDs) when technically feasible and when particular operational circumstances are met; establish mutual aid arrangements with other facilities-based mobile wireless providers for providing aid upon request to those providers during emergencies; take reasonable measures to enhance municipal preparedness and restoration; take reasonable measures to increase consumer readiness and preparation; and take reasonable measures to improve public awareness and stakeholder communications on service and restoration status. Under the final rule, MDRI will be activated when any entity authorized to declare Emergency Support Function 2 (ESF-2) activates ESF-2 for a given emergency or disaster, the Commission activates the Disaster Information Reporting System (DIRS), or the Commission’s Chief of Public Safety and Homeland Security issues a Public Notice activating the MDRI in response to a state request to do so, where the state has also either activated its Emergency Operations Center, activated mutual aid or proclaimed a local state of emergency.

28. The reporting obligation adopted in the final rule at § 4.17(c) of requires facilities-based mobile wireless providers to submit a report detailing the timing, duration and effectiveness of their implementation of the MDRI’s provisions within 60 days of when the Public Safety and Homeland Security Bureau (Bureau) issues a Public Notice announcing such reports must be filed for providers operating in a given geographic area in the aftermath of a disaster. Initial reports from providers pursuant to § 4.17(c) will be due in response to the first triggering event, as described at § 4.17(a), that occurs on or after a provider’s associated compliance date.

29. In the FNPRM the Commission seeks comment on whether it would be beneficial to

create a standardized form that providers could use for future reporting under rule § 4.17(c). To this end, the Commission proposes to direct the Public Safety and Homeland Security Bureau, under delegated authority, to develop a standardized reporting form. The Commission seeks comment on this approach and any associated costs and benefits.

30. The Commission also seeks comment on the contents of such standardized reporting forms. AT&T, for example, suggests that relevant details may include whether a provider roamed, the other providers it roamed with, the time period involved and, if relevant, the time it took for a provider to perform a health assessment and activate roaming. The Commission seeks comment on all the approaches described here, including on the associated costs and benefits.

31. The Commission seeks comment also on the basis pursuant to which facilities-based mobile wireless providers could seek confidential treatment for reports under the Commission's confidentiality rules, or if such reports should be publicly filed. The Commission seeks comment on an appropriate compliance date for providers' use of any new standardized reporting form(s) that may be developed, including whether the compliance date should depend on the class of provider (e.g., large versus small providers) subject to the requirements.

## **FEDERAL COMMUNICATIONS COMMISSION**

Marlene Dortch,  
Secretary.

[FR Doc. 2022-19744 Filed: 9/29/2022 8:45 am; Publication Date: 9/30/2022]